

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Agate Post Office
Agate, Colorado

Docket No. A2012-10

ORDER AFFIRMING DETERMINATION

(Issued February 9, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On October 12, 2011, Gail Pitzer filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Agate, Colorado post office (Agate post office).² Additional petitions for review were received from Mindy Kouri and Dennis Kouri.³ The Final Determination to close the Agate post office is affirmed.⁴

II. PROCEDURAL HISTORY

On October 14, 2011, the Commission established Docket No. A2012-10 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁵

On October 27, 2011, the Postal Service filed the Administrative Record with the Commission.⁶

² Petition for Review received from Gail Pitzer regarding the Agate, Colorado post office 80101, October 12, 2011 (Pitzer Petition).

³ Petition for Review received from Mindy Kouri regarding the Agate, Colorado post office 80101, October 27, 2011 (M. Kouri Petition); Petition for Review received from Dennis Kouri regarding the Agate, Colorado post office 80101, October 27, 2011 (D. Kouri Petition). Together, Gail Pitzer, Mindy Kouri, and Dennis Kouri are referred to as Petitioners.

⁴ The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

⁵ Order No. 908, Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 14, 2011.

⁶ The Administrative Record is attached to the United States Postal Service Notice of Filing, October 27, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, The Final Determination to Close the Agate, CO Post Office and Establish Service by Rural Route Service (Final Determination).

The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁷

On December 21, 2011, the Public Representative filed a reply brief.⁸

III. BACKGROUND

The Agate post office provides retail postal services and service to 54 post office box customers. Final Determination at 2. One-hundred-twenty-six (126) delivery customers are served through this post office. The Agate post office, an EAS-11 level facility, provides retail service from 8:00 a.m. to 5:00 p.m., Monday through Friday, and 8:00 a.m. to 11 a.m. on Saturday. Lobby access hours are 24 hours daily, Monday through Saturday. *Id.*

The postmaster position became vacant on February 19, 2011 when the Agate postmaster was reassigned. A non-career officer-in-charge (OIC) was installed to operate the post office. Retail transactions average 13 transactions daily (15 minutes of retail workload). Post office receipts for the last three years were \$14,358 in FY 2008; \$16,412 in FY 2009; and \$13,298 in FY 2010. There are no permit or postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$50,479 annually. *Id.* at 8.

After the closure, retail services will be provided by the Deer Trail post office located approximately 13 miles away.⁹ Delivery service will be provided by rural carrier through the Deer Trail post office. The Deer Trail post office is an EAS-13 level post office, with retail hours of 7:45 a.m. to 4:45 p.m., Monday through Friday, and no retail

⁷ United States Postal Service Comments Regarding Appeal, December 6, 2011 (Postal Service Comments).

⁸ Public Representative Comments, December 21, 2011 (PR Comments).

⁹ MapQuest estimates the driving distance between the Agate and Deer Trail post offices to be approximately 12.72 miles (12 minutes driving time)

hours on Saturday.¹⁰ One-hundred-forty-two (142) post office boxes are available. *Id.* The Postal Service will continue to use the Agate name and ZIP Code. *Id.* at 7; Concern No. 3.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners oppose the closure of the Agate post office. Petitioners raise concerns about the inconvenience and added travel to the Deer Trail post office. Pitzer Petition at 1. Petitioners also have concerns about the limited ability to conduct business transactions or pay bills without the Agate post office because much of the community does not have internet service. M. Kouri Petition at 1; D. Kouri at 1. In addition, Petitioners have suggested alternatives to the closure of the Agate post office. Pitzer Petition at 1-2.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Agate post office. Postal Service Comments at 1. The Postal Service believes the appeal raises four main issues: (1) the effect on postal services; (2) the impact on the Agate community; (3) the economic savings expected to result from discontinuing the Agate post office; and (4) the impact on employees. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Agate post office should be affirmed. *Id.*

The Postal Service explains that its decision to close the Agate post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;

¹⁰ The Final Determination is not clear as to whether the Deer Trail post office is open on Saturday. However, the Administrative Record indicates that it is not open for retail access hours. See Administrative Record Item No. 42.

- a variety of other delivery and retail options including the convenience of rural minimal impact on the community; and
- expected financial savings.

Id. at 3. The Postal Service contends that it will continue to provide regular and effective postal services to the Agate community when the Final Determination is implemented. Postal Service Comments at 3; Final Determination at 7.

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioners regarding the effect on postal services, the effect on the Agate community, economic savings, and the effect on postal employees. Postal Service Comments at 4-10

Public Representative. The Public Representative concludes that the Postal Service followed all applicable procedures and its decision is supported by substantial evidence, and therefore, the closure of the Agate post office should be affirmed. PR Comments at 1. However, she notes that the Postal Service needs to respond to each patron's comments and concerns to ensure that the needs of the community are addressed. *Id.*

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the

Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The Administrative Record indicates the Postal Service took the following steps in providing notice of its intent to close. On March 27, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Agate post office. Final Determination at 2. A total of 180 questionnaires were distributed to delivery customers. Other questionnaires were made available at the retail counter. A total of 62 questionnaires were returned. On May 26, 2011, the Postal Service held a community meeting at Agate School to address customer concerns. Forty-six (46) customers attended. *Id.*

The Postal Service posted the proposal to close the Agate post office with an invitation for comments at the Agate and Deer Trail post offices from June 13, 2011 through August 14, 2011. The Final Determination was posted at the same two post offices on September 28, 2011 and to date, has not been removed. Postal Service Comments at 3; Administrative Record, Item No. 49.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. Agate, Colorado is an unincorporated community located in Elbert County. Administrative Record, Item No. 16. The community is administered politically by the Elbert County Court. Police protection is provided by the Elbert County Sheriff's Department. Fire protection is provided by the Agate Fire Department. The community is comprised of farmers, retirees, and those who work in local businesses or commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. *See generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Agate community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Agate post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 6-7.

Petitioners raise the issue of the effect of the closing on the Agate community. Petitioners assert that the Agate post office has serviced the community well and its closure will be a great loss. M. Kouri Petition at 1. The Postal Service contends that it considered these issues and explains that the community identity will be preserved by continuing the use of the Agate name and ZIP Code. Final Determination at 7; Postal Service Comments at 7. Further, the Postal Service asserts that it will continue to provide regular and effective postal services to all residents of Agate. *Id.*

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Agate postmaster was reassigned on February 19, 2011 and that an OIC has operated the Agate post office since then. Postal Service Comments at 9; Final Determination at 2. It asserts that the non-career OIC may be reassigned or separated and that no other Postal Service employee will be adversely affected. Postal Service Comments at 9; Final Determination at 7.

Petitioners express gratitude and praise for the services provided by the Agate post office employees. M. Kouri Petition at 1; D. Kouri Petition at 1. The Postal Service is appreciative and sympathetic to the Petitioners' concerns; however, this concern does not outweigh the other considerations cited in support of the Final Determination. Postal Service Comments at 10.

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Agate post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Agate customers. Postal Service Comments at 4. It asserts that customers of the closed Agate post office may obtain retail services at the Deer Trail post office located 13 miles away. Final Determination at 2. Delivery service will be provided by rural carrier through the Deer Trail post office. The Agate post office box customers may obtain Post Office Box service at the Deer Trail post office, which has 142 boxes available. *Id.*

For customers choosing not to travel to the Deer Trail post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 4. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.*

Petitioner Pitzer expressed concerns about the added distance of travel to the Deer Trail post office. Pitzer Petition at 1. She states it is not cost effective and an

inconvenience when much of her mailings are time sensitive. *Id.* The Postal Service contends that it considered the impact on business customers. Postal Service Comments at 5. Retail services will be provided through the rural carrier and customers can drop off Priority Mail and Express Mail at designated drop-off sites. *Id.*

Petitioners also assert that they do not have internet access to conduct postal transactions online. M. Kouri Petition at 1; D. Kouri Petition at 1. The Postal Service explains that customers do not need a computer to purchase stamps, money orders or request special services; the rural carrier provides many of the retail services that are offered at the Deer Trail post office; alternatively the necessary forms can be found at local stores and gas stations. Postal Service Comments at 5-6.

The Public Representative expresses concern over the need of the Postal Service to respond to each customer's comments. PR Comments at 1. In particular, the comment of a patron concerning the inappropriate location of its mailbox was not addressed. The patron's mailbox is continuously damaged by cattle traversing the road; therefore, he will need a post office box regardless of where his post office is located because the location chosen by the Postal Service for his mailbox is inadequate. The Public Representative advises the Postal Service to address this concern and to ensure that mailboxes are located in viable areas. *Id.*

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$50,479. Final Determination at 8. It derives this figure by summing the following costs: postmaster salary and benefits (\$44,279) and annual lease costs (\$6,400), minus the cost of replacement service (\$200). *Id.*

Petitioner proposes alternatives to the closure of the Agate post office that may increase revenue at that location. Pitzer Petition at 1-2. The recommendations include selling office supplies, reducing hours, and rearranging management of other post offices. *Id.* The Postal Service states that it has broad experience with similar options, but ensures that rural service to existing customers and rural service to cluster box

units, coupled with service provided by the Deer Trail post office, is more cost-effective than maintaining the Agate post office. Postal Service Comments at 8. The Postal Service's estimates are supported by the evidence in the Administrative Record and are in accordance with the Postal Service's statutory obligations. *Id.*

The Commission has previously observed that the Postal Service should include in its estimate of savings those costs likely to be eliminated by the closing. The Agate post office postmaster was reassigned on February 19, 2011. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Agate post office has been staffed by an OIC for approximately one year, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Agate post office is affirmed.¹¹

¹¹ See footnote 4, *supra*.

It is ordered:

The Postal Service's determination to close the Agate, Colorado post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Agate post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster was reassigned on February 19, 2011. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only an OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data was in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

I am also concerned about the 12.7 mile driving distance between the Agate post office and the Deer Trail post office offered as a substitute. Several members of Congress have publicly expressed concern that post offices that are 10 miles apart should be maintained in rural areas. The Postmaster General has expressed interest in finding other ways to serve such distant post offices rather than close them altogether.

Recent legislation has been introduced precluding the closure of a post office in cases where the nearest post office is more than 10 miles away. The Commission in its recent Advisory Opinion (Docket No. N2011-1) found that using optimization modeling, the Postal Service could make better choices about which post offices to close that would assure adequate access in rural areas.

Also, the Administrative Record shows that Agate residents will lose Saturday postal retail service. The Postal Service is hoping to implement five day service, promising that customers will still have access to service on Saturday through their local post offices. This proposal to shift Agate to a post office that is not open on Saturdays demonstrates that the Postal Service is not coordinating its various plans for cost reduction and thereby likely missing the negative impact on members of the public and the provision of the Universal Service Obligation.

The Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Agate, Colorado and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career employee postmaster relief (PMR) has been in charge of this facility since February 2011, not an EAS-11 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Agate post office and should be remanded.

Nanci E. Langley